



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.688 OF 2024

Bhupendra s/o Firturam Baghmariya

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Kalamna at Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. S. Padia, Counsel applicant.

Mr. U. R. Phasate, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/08/2024

1. The applicant came to be arrested on 29.09.2023 in connection with Crime No.819/2023 registered with Police Station, Kalamna, District Nagpur for the offence punishable under Section 302 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Dhanesh Latlu Nishad alleging that on 27.09.2023, altercation was happened between the two groups at the time distribution of food 'Mahaprasad' arranged at Rambhumi Ganesh Mandal, Jayitkhamb, Rambhumi Chowk, Nagpur. In one group, there were Rohit Devganiya, Rakesh Waghmare and others and the resident of area where the deceased was residing, while in opposite group they were residents of Jayitkhamb locality.

3. On next day i.e. on 28.09.2023, Rohit, Bicchu, deceased Premchand Nishad and some others went at Jayitkhamb area to inquire with the residents of Jayitkhamb who were involved in a previous date altercation. When the deceased Premchand was confronting with the brother of the present applicant, the applicant went inside the house, brought the knife and given the blow on the neck of the deceased. Due to which, there was an instantaneous death of the deceased. Thereafter, elder son of the informant rushed towards the Jayitkhamb area after hearing the news of the incident. At the spot of incident, he was informed that the deceased was earlier taken to the private hospital and thereafter, referred to the Mayo Hospital, where he was declared as dead. On the basis of the said report, police have registered the crime against the present applicant.

4. During the investigation, the Investigating Officer has recorded various statements of the witnesses, wherein it revealed due to the altercation between the two groups on the next day, the deceased and other went at the area of Jayitkhamb to inquire about the incident and at the relevant time the deceased was assault by the present applicant and caused his death.

5. Learned Counsel for the applicant submitted that the right of private defence is available to the present applicant as the deceased

and other 20-25 persons holding weapons in their hands approached the family members of the present applicant and considering there is an apprehension of death to the person and the family members as well as to the property. He exercised the right of private defence and dealt a blow on the neck of the deceased and death of the deceased is caused. He submitted that there was no premeditation or intention to cause the death of the deceased, but in apprehension of the death, he has to save himself, he has dealt two blows and which gives to the fatal and thereafter, the deceased died. Now, the applicant is behind bar for reasonable period, his further incarceration is not required, in view of that, he be released on bail.

6. In support of his contention, he placed reliance on **Lakshmanan and Ors. Vs. Lakshmanana and Anr reported in AIR 1964 MAD 418**, wherein the Hon'ble Apex Court has dealt with the aspect of the right of private defence. He submitted that by referring the catena of decisions it is observed by the Hon'ble Apex Court that "It is true that an accused person taking the plea of the right of private defence is not required to call evidence but an establish that plea by reference to the circumstances transpiring from the prosecution evidence itself. But the question in a such case would be a question of accessing the true effect of the prosecution evidence and not a question of the accused discharging any burden."

7. He submitted that in the light of Section 99 of the Indian Penal Code that there was an apprehension of death or of a grievous hurt and therefore the applicant has exercised the right of private defence and while exercising the right of private defence the injury was sustained by the deceased and deceased succumbed to the death. Thus, the case of the applicant covers under the exception, and considering the same, the applicant be released on bail.

8. Learned APP strongly opposed the said application on the ground that during the investigation, Investigating Officer conducted the spot panchnama and from the spot, he has collected mixed soil, simple soil and two brown colour chappal wherein the blood stains were found. During the investigation, the Investigating Officer has also recorded the relevant statements of the eye witnesses from which it reveals that the deceased and other members went in the area where the present applicant is residing only to inquire regarding the incident which took place on earlier day. As far as the carrying of the weapon by persons is concerned, there is no material to substantiate the said contention that mob was armed with the weapons when approached to the present applicant and therefore, there was an apprehension of death and therefore, the applicant has exercised the right of private defence. He submitted that there was no

reasonable apprehension as far as right of private defence is concerned. Moreover, that aspect can be considered at the time of trial. At this stage, the intention of present applicant can be gathered from the circumstances that the applicant went inside the house, brought the knife, given two blows on the vital part of the body and thereafter, there was instantaneous death of the deceased. He submitted that from the statement of the eye witnesses nowhere it reveals that the applicant was having apprehension of death or grievous hurt at the hands of either deceased or mob who was gathered and there as there was no apprehension, no right of private defence is available to the present applicant, in view of that, the application deserves to be rejected.

9. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that on earlier day i.e. 27.09.2023 there was some altercation between the two groups when they gathered at Rambhumi Ganesh Mandal Jayitkhamb, Rambhumi Chowk, Nagpur. On the next day i.e. on 28.09.2023, one boy namely Bicchu asked his friends that his brother was abused and assaulted by the other group and they should go and inquire with them. After convincing him also said Bicchu was not ready to accept the said contention therefore, other members of the said group went in the Jayitkhamb

area. It reveals from the statements of the various eye witnesses that there was communication going on between the brother of the present applicant and other members, at the relevant time, present applicant went inside, brought the knife and gave a blow of knife on the neck of the deceased and deceased sustained the grievous injuries.

10. From the statements of the eye witnesses it reveals that the circumstances under which the alleged incident has taken place. The statements of various eye witnesses were recorded and from which it reveals that some talks were going on between the brother of the present applicant and the members of the group who approach to them in a Jayitkhamb area, at the relevant time, present applicant went inside the house, brought the knife and given two blows on the neck of the deceased.

11. As far as the contention of the learned Counsel for the applicant that right of private defence is available to the present applicant is concerned, and his case covers under the exception of Section 96 i.e. right of private defence. Section 96 does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and

circumstances of each case. No test in abstract is laid down for determining such a question. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea.

12. The Hon'ble Apex Court in catena of decisions considered when the right of private defence is available to the accused. In the case of **Ananta Deb Singha Mahapatra & Ors vs State Of West Bengal** reported in **AIR 2007 SC 2524** in para No.12 it is held by the Hon'ble Apex Court that the number of injuries is not always a safe criterion for determining who is the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilities the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to

cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either

death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.

13. Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offence, although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. As soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

14. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Thus, running to house, fetching a tabli and assaulting the deceased are by no means a matter of course. These acts bear stamp of a design

to kill and take the case out of the purview of private defence.

15. In another decision of **Bihari Rai vs State Of Bihar(Now Jharkhand)** reported in **AIR 2009 SC 18** wherein also in para No.13, the Hon'ble Apex Court has observed that the number of injuries is not always a safe criterion for determining who is the aggressor. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabalises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not

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16. Thus, the right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat to commit the offence,

although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. As soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

17. In the light of the above observations, if the facts of the present case are considered it shows that due to the dispute on earlier day one Bicchu, one of the member of one group insisted the other members of the group to approach the present applicant and his family members and therefore, they had been to the area where the applicant is residing. The statements of the eye witnesses if perused shows that when they were communicating with the brother of the deceased, present applicant went inside and brought a knife and gave two blows on the neck of the deceased. The statements of the eye witnesses nowhere discloses that the persons who gathered in the said area were holding any weapon in their hands. The statement of Bhoku @ Nilkamal Devsingh Mahipal, Girish Manshuk Shahu is only to the extent that there were abuses exchange between the group and the brother of the present applicant and on that present applicant went inside and brought a knife and gave blows.

18. The Postmortem report which is on record shows total 12 injuries on the person of the deceased. Out of which, 6 injuries are stab wounds and other injuries are incised wounds and abrasions. Death of the deceased is due to injuries to vital structures. Admittedly, the blows are given on the vital part of the body. Admittedly, the intention of the accused is the inner compartment of his mind and no direct evidence would be available to show the intention, intention is to be gathered from the surrounding circumstances.

19. After considering the entire statements of the witnesses at this stage, it is difficult to accept that the right of private defence was available to the present applicant it depends upon the evidence which is recorded before the Court. At this stage, from the statements of the witnesses, no apprehension of death of such a nature that there was no other recourse available to the applicant either to the police machinery or to approach to the other person. Thus, there was other ways available to the applicant to seek the help either from the neighbours or from the police machinery was of course available which was not exercised by the present applicant. Considering the injuries sustained by the deceased which are 12 in number and corresponding with the internal injuries, intention of the applicant can be gathered from the said circumstance, in view of that, and

considering the gravity of the offence, the application deserves to be rejected.

20. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)